

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing a Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Link-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**PETITION FOR CLARIFICATION AND RECONSIDERATION
OR, IN THE ALTERNATIVE, FOR WAIVER OF CTIA – THE WIRELESS
ASSOCIATION® AND THE UNITED STATES TELECOM ASSOCIATION**

Michael F. Altschul
Christopher Guttman-McCabe
Scott K. Bergmann
Krista L. Witanowski

CTIA – The Wireless Association®
1400 Sixteenth Street, N.W.
Suite 600
Washington, DC 20036
(202) 785-0081

David Cohen
Jonathan Banks

United States Telecom Association
607 14th Street, N.W.
Suite 400
Washington, DC 20005
(202) 326-7300

June 25, 2012

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. THE COMMISSION SHOULD CLARIFY THAT THE BROADBAND REPORTING OBLIGATIONS IN SECTION 54.313(A)(11) DO NOT APPLY TO ETCs OUTSIDE OF CAF PHASE II	4
III. THE COMMISSION SHOULD REVISIT THE FIVE-YEAR PLAN FILING AND RELATED REPORTING REQUIREMENTS FOR ETCs THAT ARE NOT RECEIVING CAF PHASE II SUPPORT	10
A. The Commission Did Not Address The Five-Year Reporting Requirement As Requested In USTelecom’s Reconsideration Petition.....	10
B. The Commission’s Rules Themselves Only Require Common Carriers Seeking ETC Designation By The Commission To File A Five-Year Plan And Related Progress Reports	11
C. ETCs Not Receiving CAF Phase II Support Should Not Be Required To File A Five-Year Plan Or Related Progress Reports	13
IV. THE COMMISSION SHOULD REVISIT SECTION 54.313(C)(2), WHICH REQUIRES AN ETC TO CERTIFY THAT IAS WILL BE USED FOR BROADBAND WHEN SUCH SUPPORT IS USED FOR OTHER PURPOSES	18
V. CONCLUSION.....	20

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing a Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Link-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**PETITION FOR CLARIFICATION AND RECONSIDERATION
OR, IN THE ALTERNATIVE, FOR WAIVER OF CTIA – THE WIRELESS
ASSOCIATION® AND THE UNITED STATES TELECOM ASSOCIATION**

I. INTRODUCTION AND SUMMARY

In reforming the universal service fund and intercarrier compensation systems, the Commission’s *USF/ICC Transformation Order* adopted detailed rules with which the industry is working diligently to comply.¹ In certain instances, when these rules were unclear or did not achieve the desired objective, the Commission has provided clarification or granted

¹ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”) *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

reconsideration as appropriate.² Most recently, in its *Third Reconsideration Order*, the Commission purported to resolve various petitions for reconsideration, including the Reconsideration Petition filed by USTelecom, relating to certain aspects of eligible telecommunications carrier (“ETC”) reporting obligations, among other issues.³ However, the Commission still needs to address important aspects of these reporting obligations, including several issues raised in USTelecom’s Reconsideration Petition, which requested that the Commission reconsider imposing new reporting requirements on ETCs whose support is being eliminated.⁴ The Commission denied this request, but in so doing addressed only certain carriers and did not discuss considerations for ETCs whose legacy support is being eliminated. *Third Reconsideration Order* ¶ 8. The Commission also failed to address the reporting requirements for incumbent wireline ETCs whose support is, like competitive ETCs’ support, also subject to elimination. Thus, the Commission’s *Third Reconsideration Order* leaves unsettled what reporting and related requirements actually apply to wireless and wireline ETCs.

To resolve this uncertainty, CTIA – The Wireless Association® (“CTIA”) and the United States Telecom Association (“USTelecom”) (collectively “Petitioners”) respectfully submit this

² See, e.g., *Connect America Fund*, Order on Reconsideration, 26 FCC Rcd 17633 (2011); *Connect America Fund*, Order, WC Docket No. 10-90, DA 12-147 (rel. Feb. 3, 2012) (“*Clarification Order*”); *Connect America Fund*, Order, WC Docket No. 10-90, DA 12-298 (rel. Feb. 27, 2012); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, FCC 12-47 (rel. Apr. 25, 2012).

³ *Connect America Fund*, WC Docket No. 10-90, Third Order on Reconsideration, FCC 12-52 (rel. May 14, 2012) (“*Third Reconsideration Order*”); *Connect America Fund*, WC Docket No. 10-90, Petition for Reconsideration of the United States Telecom Association (filed Dec. 29, 2011) (“*Reconsideration Petition*”).

⁴ Reconsideration Petition at 15 (requesting that the Commission “reconsider imposing new reporting requirements on ETCs whose support is being eliminated”).

petition for clarification and reconsideration or, in the alternative, for waiver.⁵ Specifically, Petitioners request that the Commission take three steps.

First, the Commission should eliminate for ETCs other than carriers receiving Connect America Fund (“CAF”) Phase II support obligations to collect and file broadband data as potentially called for by section 54.313(a)(11) – an ambiguous rule, the meaning of which the Commission should clarify. Subjecting carriers that receive voice service funding or even targeted CAF Phase I broadband deployment funding to sweeping new broadband reporting obligations through the ETC process is inconsistent with the careful compromise solution the Commission and the industry just reached with respect to broadband outages. And, in any event, ETCs cannot report this information in 2013 because the information collection has yet to be defined by the bureaus or approved by the OMB, and as a practical matter do not have mechanisms in place to collect this data.

Second, the Commission should limit the filing of five-year service quality improvement plans and associated progress reports to those ETCs that receive CAF Phase II support, rather than ETCs whose universal service support is being eliminated or that receive CAF Phase I support or Phase II Mobility Fund support.⁶ It is simply not possible for carriers to prepare and file these plans unless and until they know if, when, and in what areas they will receive support for broadband deployment beyond the end of 2012 – all of which remains unknown.

⁵ See *USF/ICC Transformation Order* ¶ 1404 (delegating to the Wireline Competition Bureau and Wireless Telecommunications Bureau the authority “to make any further rule revisions as necessary to ensure that the reforms adopted in this Order are properly reflected in the rules,” including “correcting any conflicts between the new or revised rules and existing rules as well as addressing any omissions or oversights”); 47 C.F.R. § 1.3; 47 C.F.R. § 1.429.

⁶ The Commission expressly exempted Mobility Fund Phase I recipients from the reporting requirements of section 54.313. See 47 C.F.R. § 54.313(k).

Finally, the Commission should eliminate any requirement under section 54.313(c)(2) that an ETC certify that “frozen” Interstate Access Support (“IAS”) was used, at least in part, for broadband deployment. This certification is impossible to make because the Commission requires that IAS support be used for other purposes (*i.e.*, interstate access rate reductions), and carriers cannot spend this funding twice.⁷

Granting the requested relief would ensure that ETC reporting and related requirements are consistent with the Commission’s broader universal service reforms and would provide ETCs with much needed clarity regarding their regulatory obligations.

II. THE COMMISSION SHOULD CLARIFY THAT THE BROADBAND REPORTING OBLIGATIONS IN SECTION 54.313(A)(11) DO NOT APPLY TO ETCs OUTSIDE OF CAF PHASE II.

CTIA and USTelecom reiterate the request in USTelecom’s Reconsideration Petition that the Commission reconsider the imposition of any new reporting requirements – including those related to broadband – on ETCs whose support is being eliminated. Reconsideration Petition at 15. As USTelecom explained in its filing at the time, no purpose would be served in requiring an ETC to report broadband data when it is not receiving support intended exclusively to promote broadband deployment. *Id.*

Notwithstanding statements in the *Third Reconsideration Order* to the contrary (§ 8), the Commission did not resolve this issue. Furthermore, the new section 54.313(a)(11) adopted pursuant to the *Third Reconsideration Order*, which purports to address broadband performance reporting, is hopelessly unclear on its face. The Commission should address both issues by

⁷ Because its members are not subject to the rule, CTIA expresses no opinion on the issue involving the certification requirement under section 54.313(c)(2).

clarifying the broadband reporting requirements in section 54.313(a)(11) and limiting any such reporting requirements to those ETCs that receive CAF Phase II support.

In the *Third Reconsideration Order*, the Commission revised section 54.313(a)(11) as follows:

(11) Beginning July 1, 2013. The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology and the information and data required by this paragraphs (a)(1) through (7) [sic] of this section separately broken out for both voice and broadband service.

47 C.F.R. § 54.313(a)(11). While ostensibly a rule indicating that the Commission’s bureaus will collaborate and come up with a “network performance test” methodology that ETCs must use for reporting purposes, the same sentence of section 54.313(a)(11) goes on to say “and the information and data required by this paragraphs (a)(1) through (7) [sic] of this section separately broken out for both voice and broadband.” Is this last part of the rule a grammatical error with old text that should be deleted? What does “required by this paragraphs [sic]” mean? Does placement of broadband data reporting requirements in section 54.313(a)(11) mean all broadband reporting will be specified in upcoming bureau methodologies? And does this mean the guidance from the bureaus will incorporate aspects of section 54.313(a)(1)-(7)?

Because of this ambiguity, the Commission should clarify the language in section 54.313(a)(11) so the section 54.313(a)(1)-(7) requirements are not extended to broadband. This is the only way to ensure consistency with prior decisions of the Commission. For example, applying section 54.313(a)(1)-(7) to the broadband deployments of competitive ETCs would be flatly inconsistent with the Commission’s determination in the *USF/ICC Transformation Order* that “[c]ompetitive ETCs whose support is being phased down will not be required to submit any

of the new information or certifications ... related solely to the new broadband public interest obligations” *USF/ICC Transformation Order* ¶ 583.

Likewise, applying section 54.313(a)(1)-(7) (including outage information in (a)(2)) would contravene the Commission’s recent decision not to impose the network outage reporting requirements in section 4.5 to broadband Internet services – an issue the Commission found earlier this year warranted “further study.”⁸ Given the “technical issues involved in identifying and reporting significant outages of broadband Internet services,” the Commission was persuaded that the willingness of broadband Internet service providers “to participate in a voluntary process to improve the Commission’s understanding of the underlying technical issues associated with broadband Internet service outages” would best serve the public interest. *Outage Reporting Order* ¶ 114.

The Commission must reconcile its *Outage Reporting Order* with section 54.313(a)(2), which explicitly references section 4.5 that requires outage reporting for voice services. If these outage reporting requirements are extended to broadband under section 54.313(a)(11), the Commission would effectively undo the careful balance it just struck in its *Outage Reporting Order*. Such a result could not be what the Commission intended, and the Commission should clarify section 54.313(a)(11) accordingly.

Furthermore, absent clarification that section 54.313(a)(11) does not extend the section 54.313(a)(1)-(7) requirements to broadband, the industry would be saddled with reporting requirements that are inconsistent with the Commission’s decision *not* to designate broadband as

⁸ *The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Report and Order, 27 FCC Rcd 2650, ¶ 9 (2012) (“*Outage Reporting Order*”).

a “supported service” under section 254(c)(1). *USF/ICC Transformation Order* ¶¶ 76 & 86. For example, requiring an ETC to report for broadband the number of unfilled requests for service (section 54.313(a)(3)) or the number of complaints per 1,000 connections (section 54.313(a)(4)) would provide no insight into whether “the performance of broadband available in rural and high cost areas is ‘reasonably comparable’ to that available in urban areas,” which is the Commission’s ostensible objective in requiring ETCs to offer broadband as a condition to their receipt of universal service support. *Id.* ¶ 87.

Moreover, even if section 54.313(a)(11) were construed to require broadband performance data reporting, it is literally impossible for ETCs to meet the July 1, 2013 reporting deadline adopted in the *Third Reconsideration Order*. In order to meet this deadline, ETCs would have to collect broadband performance data in 2012, but many (if not most) ETCs have no existing processes to do so. ETCs should not be expected to put such processes in place unless and until the Commission has obtained OMB approval of section 54.313(a)(11), which has yet to occur. *Cf. Clarification Order* ¶ 12 (“The Bureau will provide affected ETCs sufficient time after PRA approval is obtained to file the required [ownership] information”). Furthermore, the bureaus have yet to announce the “methodology and format” for any broadband performance reporting pursuant to section 54.313(a)(11). Thus, ETCs could not report by July 2013 the information ostensibly required by section 54.313(a)(11), even if they wanted to and even if they knew what information to collect and report.

Regardless of how section 54.313(a)(11) is construed substantively, the Commission should limit any broadband reporting requirements to those ETCs that actually receive broadband support pursuant to CAF Phase II. As the Commission reasoned in establishing its reporting requirements, “it is necessary and appropriate” for the Commission to collect

information “to monitor progress in achieving our broadband goals” and to ensure “that universal service funds are used for their intended purposes.” *USF/ICC Transformation Order* ¶ 580.

Consistent with such reasoning, broadband data reporting should not be required of an ETC that does not receive universal service support specifically intended for broadband deployment in CAF Phase II.

The Commission should not impose broadband reporting requirements on recipients of CAF Phase I “frozen” support. For an ETC whose only frozen high-cost support consists of IAS, for instance, such support is used to lower interstate access charges, not to fund broadband deployment.⁹ No purpose would be served in requiring such an ETC to report broadband performance data pursuant to section 54.313(a)(11). Moreover, frozen high cost support is scheduled to be phased out once CAF Phase II becomes operational effective January 1, 2013. It makes no sense for the Commission to require carriers whose support may be phased out in a matter of months to put in place complex new mechanisms for gathering broadband-related data. And, in any event, broadband reporting is not necessary to monitor compliance with the very general requirement imposed on frozen high-cost recipients in 2012 to use support “consistent with the goal of achieving universal availability of voice and broadband.” 47 C.F.R. § 54.313(c)(1).

Similarly, even if frozen support continues in 2013 and beyond, broadband reporting is not necessary to monitor progress towards the broadband-related obligations imposed in those years. In 2013, for example, carriers are required to use only a portion of their frozen support “to

⁹ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶ 30 (2000) (“*CALLS Order*”).

build and operate broadband-capable networks,” and to use such support only in specific areas “substantially unserved by an unsubsidized competitor.” *USF/ICC Transformation Order* ¶ 150. The partial and geographically limited use of frozen support (“support” that ETCs are forced to take) for broadband-related expenditures cannot serve as justification for broadband performance reporting across a provider’s entire network.

The Commission should also decline to impose broadband data reporting requirements under section 54.313(a)(11) to CAF Phase I “incremental” support. CAF Phase I incremental support is a limited mechanism intended to fund broadband deployment to a small number of unserved locations on a one-time basis. *USF/ICC Transformation Order* ¶ 147; CAF Phase I Notice ¶ 11. It does not and is not intended to support broadband coverage over large swaths of geography and thus cannot serve as justification for broadband performance reporting across an ETC’s entire network. Moreover, the Commission’s rules already provide reporting requirements that are specifically tailored to the obligations of incremental support recipients. 47 C.F.R. 54.313(b).¹⁰

¹⁰ Absent any connection between the use of the funding and the purpose of the reporting, requiring an ETC to report system-wide broadband deployment data when it does not receive universal service subsidies to support that system would be arbitrary and capricious. *See, e.g., Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42-43 (1983) (“Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise” (citations omitted)); *Kristin Brooks Hope Center v. FCC*, 626 F.3d 586, 591 (D.C. Cir. 2010) (“In light of its failure to provide a reasonable explanation that connects the ‘facts found’ and the ‘choice made,’ the FCC’s decision is arbitrary and capricious under 5 U.S.C. § 706(2)(A).” (citation omitted)). The Commission cannot overcome this hurdle by relying upon the vague and undefined notion that ETCs must use funding consistent with the goal of achieving “universal availability” of voice and broadband. *USF/ICC Transformation Order* ¶ 48.

III. THE COMMISSION SHOULD REVISIT THE FIVE-YEAR PLAN FILING AND RELATED REPORTING REQUIREMENTS FOR ETCs THAT ARE NOT RECEIVING CAF PHASE II SUPPORT.

CTIA and USTelecom also urge the Commission to clarify or reconsider the five-year service improvement plan and progress report filing requirements. These requirements should only apply to ETCs receiving CAF Phase II support. It makes no sense, and is impossible in any event, for most ETCs to prepare five-year plans outside of CAF Phase II. Until CAF Phase II comes on-line, ETCs do not know if, when, how much, for how long, and in what areas they will receive ongoing support. Any speculative, hypothetical deployment plan for federal funding that may or may not come would be worthless and a waste of time to prepare and review.

A. The Commission Did Not Address The Five-Year Reporting Requirement As Requested In USTelecom's Reconsideration Petition.

In its Reconsideration Petition, USTelecom requested that the Commission “reconsider imposing new reporting requirements on ETCs whose support is being eliminated,” noting that such reporting requirements “will involve significant costs that are unreasonable to impose on ETCs whose support is being eliminated.” Reconsideration Petition at 15. USTelecom pointed to the obligation to file five-year service quality improvement plans as “the most egregious example” of unnecessary reporting requirements. *Id.*

As noted above, while purporting to resolve USTelecom's Reconsideration Petition, the *Third Reconsideration Order* did not address the merits of USTelecom's argument. Instead, the Commission limited its discussion to competitive ETCs, even though competitive ETCs are not the only eligible carriers whose support is subject to elimination, and failed to take into account

key considerations with respect to the reporting obligations imposed on competitive ETCs.

Third Reconsideration Order ¶ 8.¹¹

The Commission should have considered the impact of its five-year progress reporting requirement in section 54.313(a)(1) on all ETCs and should have explained why this requirement is warranted for ETCs losing their universal service support, particularly for a legacy ETC that does not even have an existing five-year plan. Furthermore, as discussed below the Commission's rules regarding which ETCs are obligated to file five-year plans – specifically, sections 54.202(a) and 54.313(a)(1) – are inconsistent with the text of the *USF/ICC Transformation Order*. To resolve this inconsistency, the Commission should clarify or reconsider or, in the alternative, waive any language in the *USF/ICC Transformation Order* that purports to require five-year plans and related progress reports from ETCs receiving universal service support that is being eliminated as well as recipients of CAF Phase I support and Phase II Mobility Fund support. Instead, the obligation to submit a five-year plan and file related progress reports should be limited to those ETCs that receive support pursuant to CAF Phase II.

B. The Commission's Rules Themselves Only Require Common Carriers Seeking ETC Designation By The Commission To File A Five-Year Plan And Related Progress Reports.

Under section 54.202(a) of the Commission's rules, the only obligation to file a five-year "service quality improvement plan" rests with a common carrier seeking designation by the Commission as an ETC. 47 C.F.R. § 54.202(a)(1)(ii). Specifically, that rule provides that "[i]n

¹¹ For example, with the implementation of CAF Phase II, which is expected to be in effect on or before January 1, 2013, a price cap ETC that declines to serve all locations in its service territory in a state "will cease to receive high-cost universal service support." *USF/ICC Transformation Order* ¶ 180. Likewise, for certain rate-of-return carriers, the safety net additive will be eliminated in 2013, and local switching support will be eliminated as a stand-alone universal service support mechanism for all rural incumbent carriers effective July 1, 2012. *Id.* ¶¶ 248-257.

order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must ... [s]ubmit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area.” *Id.* Thus, a common carrier previously designated as an ETC is not required to file a five-year plan under a plain reading of section 54.202(a)(1)(ii).

However, new section 54.313(a)(1) obligates all ETCs to submit “progress reports” on their five-year plans, without acknowledging that many ETCs do not even have such a plan. Specifically, section 54.313(a)(1) requires “[a]ny recipient of high-cost support” to provide the following:

A progress report on its five-year service quality improvement plan pursuant to § 54.202(a), including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

47 C.F.R. § 54.313(a)(1) (emphasis added). “High-cost support” is defined as all legacy support mechanisms as of October 1, 2011 (*i.e.*, high-cost loop support, safety net additive and safety valve support, local switching support, forward-looking model support, IAS, and interstate common line support), support to competitive ETCs under new section 54.307(e), CAF Phase I support, and Phase II Mobility Fund support. 47 C.F.R. § 54.5.

In the *USF/ICC Transformation Order*, the Commission indicated that, because “existing five-year build out plans may need to change to account for new broadband obligations set forth in this Order, we require all ETCs to file a new five-year build-out plan in a manner consistent

with 54.202(a)(1)(ii) by April 1, 2013.”¹² However, no such requirement appears in the Commission’s rules. Instead, those rules only impose a five-year plan filing requirement on a common carrier seeking to become an ETC – not a common carrier that is already an ETC.¹³

Furthermore, unlike federal-designated ETCs, most state-designated ETCs have never prepared or submitted a five-year build out plan, since they were not required to do so as a condition to obtaining their ETC designation. Thus, the Commission’s reference to the need to change “existing five-year build out plans” assumes that all ETCs have an “existing” five-year plan on file, which is not the case.

Under the circumstances, the Commission should clarify or reconsider or, in the alternative, waive any language in the *USF/ICC Transformation Order* that purports to obligate an existing ETC without a five-year plan to file progress reports required under section 54.313(a)(1).

C. ETCs Not Receiving CAF Phase II Support Should Not Be Required To File A Five-Year Plan Or Related Progress Reports.

Even assuming the Commission had adopted a rule requiring existing ETCs to file a five-year plan (which is not the case), the Commission should reconsider or waive any such requirement. Instead, the Commission should limit the obligation to file a five-year plan and related progress reports to those ETCs receiving CAF Phase II support.

¹² *Id.* ¶ 587; *see also Clarification Order* ¶ 5 (noting that “all ETCs are required to file a new five-year build-out plan by April 1, 2013” and purporting to amend section 54.313(a)(1) “to clarify this requirement”).

¹³ The *Third Reconsideration Order* rejected USTelecom’s arguments that the Commission had adopted its new reporting requirements in violation of the Paperwork Reduction Act (“PRA”), noting that it “sought and has received OMB approval for these provisions.” *Id.* ¶ 7. However, as there is no Commission rule requiring an existing ETC to submit a new five-year build-out plan “to account for new broadband obligations,” it does not appear that the Commission sought or received OMB approval for this requirement, even though it would involve a modification to an information collection under the PRA. *See* 44 U.S.C. § 3507(h)(3).

For a previously designated ETC whose support is being eliminated, it would be nonsensical to require that ETC to develop a five-year plan when it cannot accurately take into account all the funding variables under the current universal service regime that would be required to complete a build-out plan. For example, a price cap ETC's five-year build out plan would look very different depending upon whether: (i) CAF Phase II is implemented by the January 1, 2013 deadline and the ETC elects not to accept CAF Phase II support; (ii) CAF Phase II is implemented by the January 1, 2013 deadline and the ETC elects to accept CAF Phase II support; or (iii) CAF Phase II is not implemented by the January 1, 2013 deadline and the ETC must repurpose its legacy support for broadband deployment under the Commission's three-year transition period.

Similarly, competitive ETCs are poised to incur a 20 percent reduction in their support effective July 1, 2012 and will experience a rapid elimination in the remainder of their support. Competitive ETCs providing mobile wireless services similarly have no information on whether they will receive *any* support – let alone a specific amount – pursuant to either Phase I or Phase II of the Mobility Fund.¹⁴ In short, ETCs cannot accurately complete a five-year build out plan when they do not know whether and how much funding they will receive and in what areas, nor do they know whether they will choose to participate in the future funding programs whenever they come online.

Likewise, it would make no sense to require an ETC whose frozen support consists only of IAS to prepare a five-year build out plan. Consistent with the Commission's requirements, carriers use IAS to lower interstate access charges. *CALLS Order* ¶ 30. Such support is not used

¹⁴ Most competitive ETC support to Verizon Wireless and Sprint will end entirely by the end of 2012 as a result of merger commitments and related Commission decisions. *USF/ICC Transformation Order* ¶ 520.

“to improve service quality, coverage, or capacity,” which would be the ostensible purpose of a build out plan. Indeed, IAS-only ETCs should not be subject to any of the reporting obligations in section 54.313(a), since none of the subjects on which reporting is required under the rule – *e.g.*, unfulfilled service requests, number of complaints – apply to IAS-only ETCs.

By contrast, for an ETC that receives CAF Phase II support, the requirement that it submit a five-year service quality improvement plan and annual progress reports would be reasonable. *See* 47 C.F.R. § 54.313(e)(3). Under the CAF Phase II framework, the Commission will offer each price cap ETC a model-derived support amount in exchange for the ETC’s commitment to serve all high-cost, unserved locations in its service territory in a state for a five-year service term. *USF/ICC Transformation Order* ¶ 156. Before a price cap ETC accepts CAF Phase II support, it will know the amount of support it will receive for the five-year period during which CAF Phase II support is available, and it can determine whether such support is adequate to meet the applicable build-out milestones for offering broadband service. *Id.* ¶¶ 160-161 & 170-172. If the price cap ETC turns down the CAF Phase II support, the funding will then be available to competitive ETCs and other companies through competitive bidding, a reasonable condition of which will also include reporting.

Under the circumstances, a price cap ETC accepting CAF Phase II support, or a competitive ETC that accepts CAF Phase II support through a competitive bidding process, is readily able to prepare a five-year plan as contemplated by section 54.202(a)(1) and submit reports detailing its progress in achieving that plan. Accordingly, the Commission should clarify or reconsider or, in the alternative, waive any language in the *USF/ICC Transformation Order* or its rules so as to limit the obligation to submit a five-year plan and file related progress reports to ETCs receiving CAF Phase II support.

The Commission also should clarify or reconsider its rules regarding the reporting obligations of competitive ETCs, which is an issue that was cursorily addressed in the *Third Reconsideration Order*. The *Third Reconsideration Order* affirms that competitive ETCs whose support is being phased down are not required to report information related to broadband but must still “comply with annual reporting obligations” as relates to their provision of voice service. See *USF/ICC Transformation Order* ¶ 583. As the Commission correctly concluded in the *USF/ICC Transformation Order*, it would make no sense to apply broadband reporting obligations to competitive ETCs unless and until they participate in CAF Phase II. *Id.* However, this exception is not reflected in the text of section 54.313. Indeed, the only competitive ETC exemption from the reporting requirements in section 54.313(a) is for ETCs participating in Phase I Mobility Fund. See 47 C.F.R. § 54.313(k). The Commission should either amend section 54.313 consistent with paragraph 583 of *USF/ICC Transformation Order* or clarify that paragraph 583 trumps the language of section 54.313 to exempt competitive ETCs from all broadband reporting unless and until they receive support under CAF Phase II.

In addition, the Commission should revisit the requirement in section 54.313(a)(1) for competitive ETCs even as related to their provision of voice service. First, as is the case for other ETCs, most state-designated competitive ETCs do not have existing five-year plans, and they should not be required to file a new plan when their support is being phased down consistent with section 54.307(e). Second, for a competitive ETC without an existing five-year plan, the Commission should not require the filing of the report contemplated by section 54.313(a)(1), since it is not possible to report “progress” on achieving nonexistent “targets” in a nonexistent plan.

Third, even for those competitive ETCs that have existing five-year plans, such plans were predicated on the availability of universal service support at the levels authorized under the Commission's prior rules and not the phased-down levels required by section 54.307(e). Consistent with that rule, competitive ETCs will incur a 20 percent reduction in their legacy support effective July 1, 2012, and are scheduled to have the rest of their support eliminated within the next four years. Mandating that competitive ETCs report their progress in meeting targets that do not reflect the support they will receive and that they should not be expected to meet at reduced support levels would serve no useful purpose.

Finally, the Commission should clarify that the reporting requirements in section 54.313(a)(1) do not apply to recipients of CAF Phase I support or Phase II Mobility Fund support. Only ten companies are eligible for CAF Phase I support, and a carrier accepting such support must complete deployment to those locations to which the carrier intends to deploy broadband within three years after acceptance.¹⁵ Furthermore, a recipient of CAF Phase I support must certify that the broadband deployment milestones have been met and that the other requirements for such support are satisfied.¹⁶

Under the circumstances, no useful purpose would be served in requiring a recipient of CAF Phase I support to submit the progress report required by section 54.313(a)(1). First, as explained above, most states do not require that carriers provide a five-year plan as a condition to ETC designation, and thus CAF Phase I recipients likely do not have existing plans for which they can report progress. Second, in the unlikely event a recipient of CAF Phase I support has a

¹⁵ Public Notice, *Wireline Competition Bureau Announces Support Amounts for Phase One Incremental Support*, WC Docket Nos. 10-90, 05-337, DA 12-639 (rel. April 25, 2012) ("CAF Phase I Notice"); *USF/ICC Transformation Order* ¶ 147.

¹⁶ *CAF Phase I Notice* ¶ 11; *USF/ICC Transformation Order* ¶ 147.

preexisting five-year plan, it was developed without regard to either the availability of CAF Phase I support or the deployment objectives such support is required to meet. As a result, requiring a recipient of CAF Phase I support to comply with the reporting requirements in section 54.313(a)(1) would not provide the Commission with relevant information to determine whether CAF Phase I support has been utilized consistent with the Commission's rules.

For recipients of Phase II Mobility Fund support, the Commission has yet to decide the framework for support under this program, the competitive ETCs that are eligible for support, or support amounts, let alone the appropriate reporting requirements that should attach to such support. Indeed, the question of what reporting requirements should apply to Phase II Mobility Fund support is an issue explicitly raised in the Further Notice of Proposed Rulemaking that accompanied the *USF/ICC Transformation Order*. See *id.* ¶¶ 1117-1118. As the Commission has acknowledged, it requested “comment on alternative reporting requirements for Mobility Fund support to reflect basic differences in the nature and purpose of the support provided for mobile services.” *USF/ICC Transformation Order* ¶ 573, n.946. Until it resolves these issues, the Commission should clarify that the reporting requirements in section 54.313(a)(1) do not apply to recipients of Phase II Mobility Fund support. Such clarification would be consistent with its decision to exempt ETCs that receive support solely pursuant to Mobility Fund Phase I from section 54.313 reporting requirements. 47 C.F.R. § 54.313(k).

IV. THE COMMISSION SHOULD REVISIT SECTION 54.313(C)(2), WHICH REQUIRES AN ETC TO CERTIFY THAT IAS WILL BE USED FOR BROADBAND WHEN SUCH SUPPORT IS USED FOR OTHER PURPOSES.

Pursuant to the *Third Reconsideration Order*, a price cap carrier that receives frozen high-cost support is required to certify that that the high-cost support the company received in 2012 was used “consistent with the goal of achieving universal availability of voice and broadband.” 47 C.F.R. § 54.313(c)(1). Then, beginning in 2013, new section 54.313(c) on its

face requires that a Commission-specified percentage of all frozen high cost support – which is defined to include IAS – must be “used to build and operate broadband-capable networks” in unserved areas.¹⁷ Mandating that IAS be used for broadband deployment – and requiring that an ETC certify that IAS was used for such purposes – makes no sense in light of existing Commission requirements concerning this support mechanism.¹⁸

Specifically, the Commission established IAS as a mechanism to replace lost access charge revenues under the Commission’s *CALLS Order*.¹⁹ The Commission could conceivably make a rational decision to eliminate or repurpose this funding. However, it cannot rationally subject the same IAS funding to competing requirements – *i.e.*, broadband deployment and access charge replacement – because such funding cannot be spent twice. To correct this anomalous result, the Commission should clarify section 54.313(c)(2) by carving out IAS from the frozen high-cost support subject to the rule.

¹⁷ 47 C.F.R. § 54.313(c)(2)-(4) (requiring certifications by price cap carriers receiving frozen high-cost support).

¹⁸ Because its members are not subject to section 54.313(c), CTIA expresses no opinion on this issue.

¹⁹ *CALLS Order* ¶ 30; *USF/ICC Transformation Order* ¶ 152 (noting that “IAS was intended to replace allowable common line revenues that otherwise are not recovered through SLCs ...” and explaining that frozen IAS “will be treated as IAS for purposes of our existing rules”).

V. **CONCLUSION**

For the foregoing reasons, the Commission should grant CTIA and USTelecom's Petition for Clarification and Reconsideration or, in the Alternative, for Waiver.

Respectfully submitted,

By: /s/ Scott K. Bergmann

Michael F. Altschul
Christopher Guttman-McCabe
Scott K. Bergmann
Krista L. Witanowski
1400 Sixteenth Street, N.W.
Suite 600
Washington, DC 20036
(202) 785-0081

Attorneys for CTIA – The Wireless Association®

By: /s/ David Cohen

David Cohen
Jonathan Banks
607 14th Street, N.W.
Suite 400
Washington, DC 20005
(202) 326-7300

Attorneys for the United States Telecom Association

June 25, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Clarification and Reconsideration Or, In The Alternative, For Waiver was filed electronically or via US Mail on this 25th day of June 2012 to the parties listed below.

/s/ Bennett L. Ross

Bennett L. Ross

Julie Veach
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
julie.veach@fcc.gov

Carol Matthey
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
carol.matthey@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW, Room CY-B402
Washington, DC 20554